

CHARLES E. HINKLE, CHEVRON, U.S.A., INC.

IBLA 79-109

79-110

Decided April 16, 1979

Appeal from decisions of the California State Office, Bureau of Land Management, rejecting high bids tendered for two parcels of land at a sale of competitive oil and gas leases. CA-5277 and CA-5274.

Reversed and remanded.

1. Oil and Gas Leases: Competitive Leases—Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale on the basis of an inadequate bonus where the rejection has a reasonable basis in fact.

2. Oil and Gas Leases: Competitive Leases

Where a high bid tendered at an uplands competitive oil and gas lease sale, which is not clearly spurious or irresponsible, is rejected solely on the basis of statements by an official of the Geological Survey that the bid is inadequate, and no substantial factual basis for that conclusion appears in the case record, and a request for supporting documentation has been refused by the Geological Survey, the decision will be reversed and the case remanded to the Bureau of Land Management for its evaluation of the acceptability of the bids.

APPEARANCES: Charles E. Hinkle, Monterey, California, pro se; Chevron, U.S.A., Inc., by R. W. Armstrong, Attorney in Fact, San Francisco, California.

## OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Charles E. Hinkle and Chevron, U.S.A., Inc., have appealed from decisions of the California State Office, Bureau of Land Management (BLM), dated November 13, 1978, which rejected their high bids (CA-5277 and CA-5274) for two of the parcels (numbers 4 and 1) 1/ in an uplands competitive oil and gas lease sale held on September 6, 1978.

The decisions recited that the U.S. Geological Survey (Survey), the Secretary of the Interior's expert in matters concerning geologic evaluation of tracts of land for competitive leasing, had determined that Hinkle's bid of \$21 per acre and Chevron's of \$106 per acre were inadequate. The record does not contain any substantial supporting data from Survey to document these conclusions.

More specifically, the stated basis for the rejections of Hinkle and Chevron respectively are as follows:

In respect to Parcel 4, the U.S. Geological Survey recommends that the high bid of \$2,520.00 be rejected because it is inadequate. The basis for their recommendation is as follows:

"The basis for recommending rejection . . . is discussed below.

GS Pre-Sale	High Bid		
<u>Parcel</u>	<u>#Acres</u>	<u>(\$/ac.)</u>	<u>(\$/ac.)</u>
4	120	\$40	\$21

Reasons for recommending rejection

Shallow (approximately 2700') gas. Gas in demand. Shell drilled well on the parcel in 1959. Initial potential was 5 million cubic feet of gas per day. Well produced 1.7 trillion cu. ft. gas. Was producing 250 thousand cu. ft. per day at abandonment. Value of remaining recoverable gas exceeds amount bid.

The difference between the amount bid and the amount U.S. Geological Survey concluded was an adequate bid is substantial. The total amount to be derived from the high bid is \$2,520.00, and the total amount that would be

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1/ Parcels 1 and 4 comprise 109.35 and 120 acres respectively.

derived from a bid in the amount U.S. Geological Survey specifies would be adequate is \$4,800.00.

In view of these circumstances, it is determined that the appropriate action to take in this case is to invoke the United States' right to reject the high bid. Accordingly, Charles E. Hinkle's bid in the amount of \$2,520.00 is rejected.

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In respect to Parcel 1, the U.S. Geological Survey recommends that the high bid of \$11,591.10 be rejected because it is inadequate. The basis for their recommendation is as follows:

"The basis for recommending rejection . . . is discussed below.

GS Pre-Sale	High Bid
<u>Parcel</u>	<u>#Acres</u> <u>(\$/ac.)</u> <u>(\$/ac.)</u>
1	109.35    \$328.00    \$106.00

Reasons for recommending rejection

Offset production on west and north, approximately half of tract should be productive. Although our value incorporated the extra expenses due to directional drilling and ragged topography the bonus was only 1/3 of the pre-sale value."

The difference between the amount bid and the amount U.S. Geological Survey concluded was an adequate bid is substantial. The total amount to be derived from the high bid is \$11,591.10, and the total amount that would be derived from a bid in the amount U.S. Geological Survey specifies would be adequate is \$35,866.80.

In view of these circumstances, it is determined that the appropriate action to take in this case is to invoke the United States' right to reject the high bid. Accordingly, Chevron U.S.A. Inc.'s bid in the amount of \$11,591.10 is rejected.

Appellant Hinkle has presented information to controvert the findings made in the decision rejecting his bid.  
Appellant Chevron

asserts that the Survey ignored "offset production or lack of production to the east \* \* \*." The Survey memorandum completely ignored two offset wells located 250 feet east of the exterior boundary of Parcel 1, which Hinkle asserts have no or very little production.

[1] The Secretary of the Interior, or his authorized delegate, clearly has the authority to reject a high bid at a competitive oil and gas lease sale on the basis of an inadequate bonus. Section 17 of the Mineral Leasing Act, as amended, provides in part:

If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary \* \* \*. [Emphasis added.]

30 U.S.C. § 226(b) (1976). This right to reject competitive oil and gas lease offers is recognized in the regulations at 43 CFR 3120.3-1. This Board has repeatedly upheld the authority of the Secretary or his delegate to reject bids for inadequacy of the bonus offered provided the rejection has a reasonable basis in fact. Gerald S. Ostrowski, 34 IBLA 254 (1978); Frances J. Richmond, 29 IBLA 137 (1977); Yates Petroleum Corporation, 27 IBLA 224 (1976); H & W Oil Co., Inc., 22 IBLA 313, 315 (1975).

[2] Where high bids which are not clearly spurious or irresponsible are rejected solely on the basis of a statement by an official that the bids are inadequate and no rational or substantial basis for that conclusion appears in the case records, the decision will be set aside and the cases remanded for compilation of a proper record and readjudication of the acceptability of the bids. Frances J. Richmond, *supra* at 304; Ojai Oil Co., 39 IBLA 173 (1979); Arkla Exploration Co., 25 IBLA 220 (1976). As was the situation in the cited cases, it is not apparent on the face of the record in the present case that the bids are clearly spurious or unreasonable. Recognizing this, the Chief, Mineral Section, Branch of Lands and Minerals Operations of the California State Office, BLM, addressed a memorandum, dated October 3, 1978, to the Conservation Manager, Western Region, U.S. Geological Survey, requesting a new report in support of several of the Survey's recommendations. The memo reads as follows:

Subject: Inadequate High Bids for Parcels 1, 4, 7, 8,  
and 10, Competitive Oil and Gas Lease Sale  
Held September 6, 1978

A copy of your September 20, 1978, Memorandum is enclosed for ready reference. We have no objection to rejecting the high bids for Parcels 1, 4, 7, 3, and 10, if they are inadequate. However, before a decision rejecting the bids can be issued, the case records must contain a factual basis for the determination that the bids are inadequate. You have given no basis at all for inadequate bids for Parcels 7, 8, and 10. See Francis J. Richmond, 24 IBLA 303 (1976), copy enclosed. You have given some reasons for a basis for an inadequate bid for Parcel 1; however, there is insufficient elaboration. See Gerald S. Ostrowski, 34 IBLA 254 (1978), copy enclosed. Your reasons for an inadequate bid for Parcel 4 also has insufficient elaboration. A good history is given, but no projection into the future is given. An estimate of the future production should be added to the history and that production correlated to the \$40 per acre value you are giving the parcel.

Under these circumstances, we would appreciate a new report from your office that will give us a factual basis for our records that will support rejection decisions for Parcels 1, 4, 7, 8, and 10.

No written response was forthcoming from the Geological Survey. Instead, appended by staples to the file copy of BLM's memo was the following handwritten note: "Per conversation of Walt Holmes, Chief, Branch of Lands and Minerals Operations, BLM, and Henry Cullen of the Office of the Conversation Manager, Western Region, USGS, Menlo Park, NO further report will be made by USGS." (Emphasis in original.)

Subsequently, without further information of any kind, BLM issued its decision of November 13, 1978, rejecting appellants' high bids for Parcels 4 and 1. This was clearly improper. Knowing, as it did, that evidence and justification is required in support of a Survey recommendation to reject a high bid, and recognizing that Survey's recommendation was not acceptable in the form in which it was presented, and having been refused any further information from Survey, to then simply adopt the recommendation and reject the bids was, on its face, clearly the rendition of decisions without a rational predicate therefor.

The case at bar is distinguishable from Steven Lutz, 39 IBLA 386 (1979), since in Lutz no basis was given by Survey for its recommendations for rejection of the bids and therefore there was nothing for BLM to predicate an independent weighing of the rationale for rejection. In the case at bar, there are reasons given by Survey, which BLM can evaluate independently and make a judgment.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and the cases remanded to the Bureau of Land Management for action consistent herewith.

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Frederick Fishman  
Administrative Judge

I concur.

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James Burski  
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING:

I agree that this case should be remanded for further consideration. My reason for doing so is because on appeal both appellants have submitted information to support their positions that the evaluation of the tracts by the Geological Survey is too high. This is sufficient to warrant further consideration of their bids.

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Joan B. Thompson  
Administrative Judge

